

NOSB Livestock Committee Directive for Origin of Dairy Livestock

Sept 13, 2004

Introduction:

The NOSB Livestock Committee has been asked to provide input concerning origin of dairy livestock and the use of antibiotics.

Background:

Issues -

- The April 13, 2004 NOP Guidance Statement interprets the Final Rule to allow antibiotics to treat illness when preventative practices and veterinary biologics fail and when followed by one year of continuous organic management.
- The NOP interpretation directly contradicts §205.238(c)(1), which prohibits the use of antibiotics for the production of organic animals and edible products derived from treated animals.
- The legal argument presented in the NOP Guidance Statement could extend to other prohibited materials and could even be misconstrued to apply to conventional and transitional feed, contradicting §205.237(a) and §205.238(c)(1).
- The confusion over the use of antibiotics is linked to the dual track dairy replacement interpretation posted by the NOP on April 11, 2003 that allows dairy operations to continuously convert conventional animals to organic production, provided that the operation originally converted to organic production using the one year conversion process.
- The NOP's interpretation of §205.236 allows one group of organic dairy producers to continuously and repeatedly transition conventional dairy replacements to organic production one year prior to organic milk production. NOP's April 13, 2004 statement allows use of prohibited drugs and has even been misconstrued to allow conventional feed until 12 months prior to production of organic milk for animals raised on a certified organic dairy.
- The NOSB, in recorded votes on October 20, 2002 and May 14, 2003, has clearly communicated disagreement with the NOP's interpretation of §205.236. According to NOSB recommendations, once a dairy herd is certified organic, all dairy animals shall be under organic management from the last third of gestation, regardless of the method of conversion.
- There is a direct conflict between the NOP interpretation of §205.236 and the clear wording of §205.238(c)(1), which prohibits organic producers from the representation of organic products following treatment with antibiotics and other prohibited materials.

Previous Recommendations (see attached):

- During its March 16-20, 1998, meeting, the NOSB adopted language put forth by the Livestock Committee. Among other things, the recommendation stated:
“As organic livestock producers have gained additional experience, they report that good health maintenance practices gradually eliminate the need for antibiotic use except in extremely rare instances. This suggests that antibiotic use is a transitional management issue. Secondly, the organic livestock industry has now grown to the point where replacement animals are more readily available than they were two years ago.
Antibiotics are not an acceptable synthetic material and the products from animals treated with antibiotics may not be labeled organic.
Antibiotics must be used to restore an animal to health when other methods acceptable to organic production fail. Thereafter, the animal cannot be used for organic production.”
- NOSB October 20, 2002 Origin of Livestock Recommendation for Interpretation clearly defined Herd Conversion as a one time event and that after entry all dairy herds will comply with one standard for replacements and medication use.

- NOSB May 14, 2003 Origin of Livestock Recommendation for Rule Change proposed language to amend the Final Rule to require that all dairy animals must be managed organically from the last third of gestation once a dairy operation has converted to organic production.
- The NOSB Livestock Committee adopted an Antibiotic Guidance Policy on April 29, 2004 in response to the April 13, 2004 NOP Guidance Statement.
- NOSB has approved 17 Livestock Health Materials, some of which would reduce the perceived need for antibiotic treatments. None have been posted in the Federal Register.

Recommendation:

- NOP needs to issue a clarification statement that antibiotics are not allowed for organic animals or edible organic products once a producer is certified organic.
- NOP should adopt the May 14, 2003 NOSB recommendation on Origin Of Livestock as either a technical correction (preferable) or as a rule change.
 - This will unify and clarify the standard for dairy herd conversion.
 - The vast majority of organic dairy producers and Accredited Certifying Agents endorse this recommendation.
- The approval of NOSB recommended health care materials for livestock must be a priority for the USDA and related agencies.
 - Publish the Rule amendment that will allow the use of all Livestock Materials recommended by the NOSB.
 - Broadcast to the industry the opportunity to petition calf-hood medications for consideration on the National List.

Committee vote: Sep. 13, 21004 Jim R moves to accept, Becky G. seconds.

5-Yes

0-No

1-Absent

Addendum A:

**ORIGIN OF LIVESTOCK
Recommendation for Rule Change
NOSB Livestock Committee
April 29, 2003
Adopted by NOSB May 14, 2003**

Introduction

Despite efforts by the National Organic Standards Board and the National Organic Program, a problem that can be traced to inaccurate numbering of the regulation has resulted in a double standard for young stock management on organic farms. The NOSB recommendation below calls for a rule change to assure that one standard applies to all dairy operations, once they have converted to organic production.

Background

A. NOP Policy Statement

On April 14, 2003, the NOP issued a policy statement containing a “two standards” interpretation of the regulation. Under that interpretation, an operation which utilized the 80/20 feed provision during the one year transition period is forever required to manage replacement animals organically from the last third of gestation, once the herd has been converted to organic production. An operation that managed the animals

organically for one year during transition without using the 80/20 provision can continuously bring conventional replacement animals into the herd, provided that they are managed organically for one year prior to production.

The NOP “ORIGIN OF LIVESTOCK” policy states:

“The National Organic Program has received complaints that certifying agents are only allowing certified operations to add or replace dairy animals with animals that are organic from the last third of gestation. As demonstrated by the **attached document**, such requirement is a violation of the National Organic Standards. Applicants for certification and certified operations required, by their certifying agent, to source additional animals or replacement animals other than as required by section 205.236 (as shown in the attached document) should report the violation to NOP Compliance.

Details on how to file a complaint with NOP Compliance can be found on the NOP Web site at www.ams.usda.gov/nop/Compliance/FileComplaint.html.”

The “attached document” states:

“Did you convert an ENTIRE DAIRY HERD after October 21, 2002, and use the feed exemption? If YES, All future DAIRY ANIMALS must be under continuous organic management from the last third of gestation. If NO, The DAIRY ANIMALS must be under continuous organic management beginning no later than 1 year prior to production.”

B. Preamble Excerpts

On page 80560, the preamble states:

“Once the herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.”

On page 80570, the preamble states:

“After the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third of gestation. We did not incorporate the NOSB’s recommendation to provide young stock with nonorganic feed up to 12 months prior to the production of certified milk.”

On the same page, the preamble goes on to state:

“The conversion provision also rewards producers for raising their own replacement animals while still allowing for the introduction of animals from off the farm that were organically raised from the last third of gestation. This should protect existing markets for organically raised heifers while not discriminating against closed herd operations. Finally, the conversion provision cannot be used routinely to bring nonorganically raised animals into an organic operation.”

There is nothing in the preamble which indicates that, once converted, operations are allowed to continuously bring conventional animals into the organic dairy herd. Indeed, the preamble and the regulation strongly support a “systems” approach to organic production. Continuous introduction of conventional dairy replacement animals undermines, and is contrary to, a systems approach.

C. Rule Citations

In the regulation, section 205.236(b)(1) clearly states that animals may not be rotated between organic and nonorganic production. Animals must not be removed from an organic operation and managed nonorganically, if they or their products are ever to be sold or represented as organic:

§ 205.236 Origin of livestock.

(b) The following are prohibited:

(1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may be not sold, labeled, or represented as organically produced.

Section 205.238(c)(1) makes it clear that animals treated with antibiotics or other prohibited substances must not produce organic products. The new NOP policy on “origin of livestock” allows animals treated with antibiotics or other prohibited substances to continuously enter organic production, provided that they are managed organically for one year prior to production.

§ 205.238 Livestock health care practice standard.

(c) The producer of an organic livestock operation must not:

(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603, or any substance that contains a nonsynthetic substance prohibited in § 205.604.

D. Prior NOSB Recommendation

On October 20, 2002, the NOSB unanimously recommended that the regulation be interpreted to require that all dairy replacement animals be managed organically from the last third of gestation. This recommendation was supported by comments submitted by the Organic Trade Association, certifying agents, and members of the public.

Recommendation

The NOSB recommends that §205.236(a)(2)(iii) be amended to read:

§ 205.236 Origin of livestock.

(2) Dairy animals – conversion of herds. Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic, Except, That, when an entire, distinct herd is converted to organic production, the producer may:

(i) For the first 9 months of the year, provide a minimum of 80-percent feed that is either organic or raised from land included in the organic system plan and managed in compliance with organic crop requirements; and

(ii) provide feed in compliance with § 205.237 for the final 3 months.

(3) Dairy animals – replacement stock. Once a dairy herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.

Section 205.236(a)(3) will be renumbered to 205.236(a)(4).

In proposing the recommendation, the Livestock Committee notes that §205.236.(a)(2)(i) and §205.236.(a)(2)(ii) are already connected by the word “and”. There is a period at the end of §205.236.(a)(2)(ii). The punctuation indicates that this clause already stands alone.

The clear explanation of the intent of this clause on page 80570 of the preamble also indicates that §205.236(a)(2)(iii) applies to all animals, once the herd is converted. The proposed renumbering and rewording will eliminate a dual standard for young stock and be consistent with the preamble.

Committee vote – 5 in favor, 0 opposed, 1 absent.

Minority opinion – None.

Conclusion

By incorporating the rule change contained in this recommendation, the USDA will assure that one standard for replacement stock applies to all dairy operations, once they have converted to organic production.

Addendum B:

NOSB Livestock Committee Resolution NOP Antibiotic Guidance Policy 4-13-04 Draft 3 – Adopted 4/29/04 - 5 yes, 0 no

On April 13, 2004, the USDA National Organic Program issued an antibiotic guidance policy entitled, “Livestock Health Care Practice Standard, Origin of Dairy Livestock.”

According to the antibiotic guidance policy, the NOP has taken the position that antibiotics may be administered to dairy cows, calves, or heifers, provided that the animals: remain on the organic operation; are separated from the organic herd; and do not produce organic dairy products for one year.

Resolution

The National Organic Standards Board respectfully requests that the USDA National Organic Program withdraw the 4/13/04 antibiotic guidance statement and work collaboratively with the NOSB to develop policy guidance which is consistent with the livestock health care practice standard, statements made by the NOP in the preamble, NOSB recommendations, consumer expectations, and the principles of organic livestock production.

Background

The NOSB Livestock Committee was not consulted concerning the formulation of NOP's new antibiotic guidance policy and does not support the NOP's interpretation for the following reasons:

- 1) It contradicts 205.238.c.1, which states, “The producer of an organic livestock operation must not sell, label or represent as organic any animal or edible product derived from any animal treated with antibiotics;”
- 2) It allows the routine use of antibiotics to treat calves and heifers one year prior to organic milk production;
- 3) It undermines the “proactive, preventative” approach required by the regulation;
- 4) It is contrary to consumer expectations concerning the use of antibiotics in organic livestock production;
- 5) It contradicts organic dairy company claims that organic dairy products are produced without the use of antibiotics;
- 6) It is contrary to statements previously made by Richard Mathews, stating that the use of antibiotics for treatment of calfhood diseases is not allowed;
- 7) It was developed with no public transparency and no input from the NOSB;
- 8) It is not supported by a previous NOSB recommendation, summarized below;
- 9) It adds further confusion to the “two track” stream of entry used to convert dairy herds to organic production;
- 10) It provides unclear direction because it provides no definitions to distinguish between subtherapeutic and therapeutic uses of antibiotics; and
- 11) It increases the likelihood of noncompliant uses of antibiotics.

Preamble citations

The Preamble to the Final Rule, on page 80561, states the following:

“The producer of an organic livestock operation must not treat an animal in that operation with antibiotics, any synthetic substance not included on the National List of synthetic substances allowed for use in livestock production, or any substance that contains a nonsynthetic substance included on the National List of nonsynthetic substances prohibited for use in organic livestock production.”

“The producer must not withhold medical treatment from a sick animal to maintain its organic status. All appropriate medications and treatments must be used to restore an animal to health when methods acceptable to organic production standards fail. Livestock that are treated with prohibited materials must be clearly identified and shall not be sold, labeled, or represented as organic.”

“The organic system plan must reflect a proactive approach to health management, drawing upon allowable practices and materials. Animals with conditions that do not respond to this approach must be treated appropriately and diverted to nonorganic markets.”

Previous NOSB recommendation

During its March 16-20, 1998, meeting, the NOSB adopted language put forth by the Livestock Committee. Among other things, the recommendation stated:

“As organic livestock producers have gained additional experience, they report that good health maintenance practices gradually eliminate the need for antibiotic use except in extremely rare instances. This suggests that antibiotic use is a transitional management issue. Secondly, the organic livestock industry has now grown to the point where replacement animals are more readily available than they were two years ago.”

“Antibiotics are not an acceptable synthetic material and the products from animals treated with antibiotics may not be labeled organic.”

“Antibiotics must be used to restore an animal to health when other methods acceptable to organic production fail. Thereafter, the animal cannot be used for organic production.”